

**3**

1  
2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE DISTRICT OF DELAWARE

4 MARLAYNA G. TILLMAN, : CIVIL ACTION  
5 Plaintiff, :

6 vs. :

7 THE PEPSI BOTTLING GROUP, : **ORIGINAL**  
8 INC., and TEAMSTERS LOCAL: :  
9 UNION 830 :  
10 Defendants. : No. 04-1314

11 Wilmington, Delaware  
12 Tuesday, December 13, 2005  
13

14 Deposition of MARLAYNA G. TILLMAN,  
15 taken pursuant to notice, at the law offices of  
16 Ballard Spahr Andrews & Ingersoll, LLP, 919 Market  
17 Street, 12th Floor, Wilmington, Delaware, on the above  
18 date, beginning at 10:25 a.m., before Donna A.  
19 Bittner, RMR-CRR.  
20

21  
22 DONNA A. BITTNER REPORTING  
23 REGISTERED PROFESSIONAL REPORTERS  
24 61 Penn Road  
Voorhees, New Jersey 08043  
(856) 768-6619

1 APPEARANCES:

2 LORI A. BREWINGTON, ESQUIRE  
3 Margolis Edelstein  
4 1509 Gilpin Avenue  
5 Wilmington, Delaware 19806

6 Counsel for Plaintiff

7 LUCRETIA C. CLEMONS, ESQUIRE  
8 Ballard Spahr Andrews & Ingersoll, LLP  
9 1735 Market Street, 51st Floor  
10 Philadelphia, Pennsylvania 19103

11 Counsel for Defendant  
12 The Pepsi Bottling Group, Inc.

13 MARC L. GELMAN, ESQUIRE  
14 Jennings Sigmond  
15 The Penn Mutual Towers  
16 16th Floor  
17 510 Walnut Street  
18 Philadelphia, Pennsylvania 19106-3683

19 Counsel for Defendant  
20 Teamsters Local Union 830

21 ALSO PRESENT:

22 SARA ALTMAN  
23 Human Resources Representative  
24 The Pepsi Bottling Group, Inc.

- - -

Marlayna G. Tillman

28

1 two weeks or so.

2 Q. Okay.

3 MS. CLEMONS: Can we go off the record  
4 for a second?

5 (Discussion held off the record.)

6 BY MS. CLEMONS:

7 Q. Miss Tillman, do you have in your possession  
8 your tax returns for the last few years?

9 A. Actually I do not. I have to get copies of  
10 those.

11 Q. Okay.

12 A. I don't have those at hand.

13 Q. How about any documents relating to the  
14 income you received since you left Pepsi last year?

15 A. Um, can you give me an example? Are you  
16 talking about pay stubs or something like that?

17 Q. Any documents that reflect any income you've  
18 had since you left work at Pepsi.

19 A. I can get those documents, yes.

20 Q. Okay. Are those documents in the storage  
21 facility?

22 A. Some may be, not all of them.

23 Q. I want you to take a look at number 7 in the  
24 document request.

Marlayna G. Tillman

40

1 A. Well, after R & S Strauss there would have  
2 been -- I have this written down, too.

3 Q. Actually I want to ask you to tell me from  
4 your memory.

5 A. From my memory it would be J.B. Hunt, New  
6 York Blood Services, RJM Vending and I think that's  
7 all I recall from my memory.

8 Q. Since May of 2001?

9 A. Yeah.

10 Q. When did you work for J.B. Hunt?

11 A. November of 2004 until I believe February  
12 2005.

13 Q. New York Blood Services?

14 A. August 2005. No, let me back that up. July  
15 2005 through August 2005.

16 Q. Did you work between February 2005 and July  
17 of 2005?

18 A. Yes.

19 Q. Where did you go?

20 A. There we go, Cardinal Logistics as a driver.

21 Q. And what were your dates of employment there?

22 A. That was from February to July of 2005.

23 Q. Have you been working since July of 2005?

24 A. Yes.

Marlayna G. Tillman

41

1 Q. Where have you been working?

2 A. Coca-Cola, Bronx, New York.

3 Q. And are you currently employed there?

4 A. Yes.

5 Q. When did you work at RJM Vending?

6 A. I think it was in March of -- actually I  
7 don't recall. There is no point in me trying to  
8 recall that. I don't know.

9 Q. Did you work for a company called Cott  
10 Beverage?

11 A. Yes..

12 Q. When did you work for Cott?

13 A. It was in June, June 2004, for a period of  
14 three days.

15 Q. Okay. I want to start with RJM Vending.  
16 Tell me what position you held for them.

17 A. Um, basically it was like a full service  
18 vending worker more or less to refill their  
19 machines. He had vending machines.

20 Q. What position did you apply for?

21 A. Full service I guess you would call it  
22 technician, whatever.

23 Q. Is that what the position was called?

24 A. I think so.

Marlayna G. Tillman

42

1 Q. What were your job duties?

2 A. Basically just to restock the vending  
3 machines.

4 Q. And were you driving a company vehicle?

5 A. Yeah -- yes.

6 Q. Were you operating any other kind of company  
7 machinery?

8 A. No.

9 Q. How long did you work there?

10 A. Approximately a week.

11 Q. Who was your supervisor?

12 A. You know what, I don't recall his last name.  
13 I believe his first name was Robert. The letters in  
14 the business name are his initials. I think it's  
15 Robert J. something. I don't know his last name.

16 Q. What was the reason you left?

17 A. More or less I was still having problems with  
18 my leg injury and it was kind of difficult for me to  
19 get around. My leg would like swell up if I was  
20 standing on my feet for too long.

21 Q. What was your salary?

22 A. I don't recall.

23 Q. Did you get paid?

24 A. Yes, I did. I know it was significantly less

Marlayna G. Tillman

44

1 Q. How long was it after your injury that you  
2 started to receive short-term disability?

3 A. It was quite a while, maybe like 10 or 12  
4 weeks after.

5 Q. When were you injured?

6 A. November 6th, '03.

7 Q. So that would put it some time in January;  
8 correct?

9 A. Possibly. That's maybe like 10 weeks.  
10 Again, I don't recall the exact dates, so --

11 Q. I'm not asking you exactly. You said you  
12 thought it was between 10 and 12 weeks. Do you  
13 still think that?

14 A. I think so.

15 Q. Did you complete an application for RJM  
16 Vending on March 16th of 2004?

17 A. I really don't know.

18 Q. Okay.

19 A. I'm not sure.

20 Q. Would it jog your recollection if I showed  
21 you the application and it's dated March 16th, 2004?

22 A. Sure.

23 MS. CLEMONS: Would you mark that?

24 (Exhibit Tillman-8 was marked for



Marlayna G. Tillman

46

1 receiving short-term disability?

2 A. Um, after.

3 Q. So tell me how it is that you came to apply,  
4 to work with them.

5 A. Because I was instructed by my counsel at the  
6 time to mitigate my losses and to make up the  
7 difference between what I normally was paid at Pepsi  
8 and what I was receiving currently, and again  
9 because I also asked for light duty status at Pepsi  
10 and I was denied that, I was also advised by my  
11 attorney, my counsel, to seek other employment.

12 Q. Were you given light duty status at RJM?

13 A. I don't think they called it light duty  
14 status. It was a regular position.

15 Q. Is that a no? Did you apply for a light duty  
16 job at RJM is the question?

17 A. No.

18 Q. Next I want to talk about Cott Beverage.

19 What dates were you employed by Cott  
20 Beverage?

21 A. I'm not sure of the exact date, but it was in  
22 June of 2004.

23 Q. And what were your job duties there?

24 A. I was a switcher.

Marlayna G. Tillman

47

1 Q. And what does that mean?

2 A. Basically my job was to jockey the trailers  
3 from the yard to the dock.

4 Q. And what functions were you performing at  
5 Pepsi at that time?

6 A. I was performing no function at Pepsi at that  
7 time.

8 Q. You were employed by Pepsi; correct?

9 A. Right,

10 Q. You worked at Pepsi at some point in June of  
11 2004; right?

12 A. Yes.

13 Q. Okay. Were you not a transport jockey at  
14 Pepsi during that time?

15 A. Um, I was a floater. I was in different  
16 positions almost all the time.

17 Q. And one of the positions you filled was a  
18 transport jockey; correct?

19 A. Yes, a yard jockey.

20 Q. Was that position similar to the position  
21 that you applied for at Cott Beverage?

22 A. Yes.

23 Q. What was your pay there?

24 A. Where?

Marlayna G. Tillman

48

1 Q. At Cott Beverage.

2 A. I actually don't recall. I think it was --  
3 it might have been 13 something.

4 Q. Who was your supervisor?

5 A. I don't recall his name. I wasn't there long  
6 enough.

7 Q. What was the reason you left employment with  
8 Cott Beverage?

9 A. Actually they terminated me.

10 Q. Why did they terminate you?

11 A. Because I had missed a day during the -- my  
12 probationary period.

13 Q. Tell me how it is that you came to apply for  
14 a position with Cott Beverage.

15 A. If my recollection serves me, I was injured  
16 or reinjured or reaggravated my injury to my leg. I  
17 asked for accommodation at work. I was denied the  
18 accommodation and I was told by my supervisor at the  
19 time, which was Joe Rizzo, that I had to go out on  
20 short-term disability again, so they basically  
21 forced me out of work.

22 Q. That's how you came to apply to work at Cott  
23 Beverage?

24 A. As far as I remember.

Marlayna G. Tillman

49

1 Q. When did this reagravation of your injury  
2 happen?

3 A. Some time in June.

4 Q. You went back to apply at Cott Beverage a  
5 month before that; isn't that correct?

6 A. I don't know. I don't recall.

7 Q. Okay.

8 So tell me, did you apply before you  
9 said you were forced out or was it after you say you  
10 were forced out?

11 A. As far as I know -- actually I don't recall.

12 Q. Okay.

13 A. I don't recall.

14 Q. Is it fair to say that if you applied before  
15 your alleged reagravation you couldn't have applied  
16 because you reagravated your injury?

17 A. Rephrase that, please.

18 Q. You just said, and I can have the court  
19 reporter read it back if you like, the reason that  
20 you applied for employment at Cott Beverage is that  
21 you were forced out of your current, of your  
22 position at Pepsi Bottling Group.

23 A. Um-hum.

24 Q. Is that what you said?

Marlayna G. Tillman

50

1 A. I think so.

2 Q. Okay.

3 And my question to you is, is that if  
4 you in fact applied before this alleged date that  
5 you claim you were forced out, one, the forcing out  
6 could not have precipitated the actual application;  
7 is that correct?

8 A. I'm not -- I'm not really understanding what  
9 you're asking.

10 Q. If you applied in May --

11 A. Right.

12 Q. -- and you didn't get forced out according to  
13 you until June, you couldn't have applied because  
14 you were forced out; correct?

15 A. I could not have applied because I was forced  
16 out, no.

17 Q. That's correct or it's not correct?

18 A. Again, I'm not sure what you're driving at,  
19 but --

20 Q. I think you know exactly what I'm driving at  
21 and I'd like an answer to my question.

22 A. I don't think I know and you might have to  
23 clarify a little bit more.

24 Q. Okay. Here is my question.

Marlayna G. Tillman

51

1                   If the application happened in May;  
2     correct?

3       A.   That's the part we're not clear on.

4       Q.   I'm asking you. Assume it for the purpose of  
5     this question, it happened in May. Okay?

6       A.   Okay.

7       Q.   You said you reinjured yourself in June;  
8     correct?

9       A.   Um-hum.

10      Q.   And you said earlier that the reason that you  
11     were applying for application or filled out an  
12     application at Cott Beverage is because you  
13     reaggravated your injury in June; right?

14      A.   Um-hum.

15      Q.   That's what you said. So if you in fact  
16     applied in May the reinjury could not have caused  
17     the application; correct?

18      A.   Correct.

19      Q.   So why is it that you applied to work at Cott  
20     Beverage?

21      A.   Because I was looking for a job.

22      Q.   So then why did you just tell me it was  
23     because you reaggravated your injury?

24      A.   That's why I took the job at Cott.

Marlayna G. Tillman

52

1 Q. Okay.

2 A. Because I was denied the opportunity to have  
3 light duty and I was not accommodated by Pepsi.  
4 Pepsi said that you cannot be here with your injury.

5 Q. Pepsi said to you what?

6 A. That I could not be in my position with my  
7 injury, with my reaggravated injury.

8 Q. And weren't you told to apply for short-term  
9 disability?

10 A. Yes. They said that was something I had to  
11 do.

12 Q. Did you do that?

13 A. No, because I was not claiming disability.

14 Q. What do you mean you weren't claiming  
15 disability?

16 A. I wasn't disabled. I was injured and I asked  
17 to be accommodated by a chair or be able to use my  
18 bumping rights to move someone else in another  
19 position so that I could do another position,  
20 fulfill another job position that would be more,  
21 what's the word I want, I guess more, which would  
22 help me not reaggravate the injury, for lack of a  
23 better term.

24 Q. And what happened?

Marlayna G. Tillman

54

1 A. Yes.

2 Q. Do you recognize it?

3 A. Yes.

4 Q. What is it?

5 A. A job application.

6 Q. Is it completed by you?

7 A. Yes.

8 Q. Is that your handwriting?

9 A. Yes.

10 Q. Do you see the date there at the top of the  
11 application?

12 A. Yes.

13 Q. Is that May 1st, 2004?

14 A. Yes.

15 Q. Did you complete this application on that  
16 date?

17 A. Yes.

18 Q. Okay.

19 Would you take a look where it says  
20 "Position desired"?

21 A. Yes.

22 Q. And "Date available." What does it say the  
23 date available is?

24 A. 5/20.



Marlayna G. Tillman

55

1 Q. You were available to begin working at Cott  
2 Beverage on 5/20/2004?

3 A. I assume so.

4 Q. And why was that? That was again before you  
5 reaggravated your injury; correct?

6 A. Um-hum.

7 Q. Explain that to me.

8 A. Nothing to be explained. I applied for  
9 another job and told them that was my available  
10 date.

11 Q. So you were seeking to leave Pepsi in May of  
12 2004?

13 A. Not necessarily.

14 Q. What do you mean "not necessarily"?

15 A. I could have been seeking to supplement my  
16 income.

17 Q. I'm not asking what you could have, I'm  
18 asking what you did. There is a --

19 A. And I said that's not what.

20 Q. Well, that's why I'm asking you the questions.  
21 Tell me why you said you were available on the 20th.  
22 If you're telling me it's because you wanted to  
23 supplement your income, say that, but don't say it  
24 could be.

Marlayna G. Tillman

58

1 beginning of this job?

2 A. I'm pretty sure I did.

3 Q. Was that before or after you were offered the  
4 position?

5 A. I don't recall.

6 Q. When you went in on the day you had the  
7 interview, did you sign any papers?

8 A. I don't recall.

9 Q. Do you recall signing any papers?

10 A. The application I signed.

11 Q. Tell me about J.B. Hunt.

12 A. What do you need to know?

13 Q. You told me the dates of your employment.  
14 What were your job duties?

15 A. More or less to move freight from one  
16 location to another.

17 Q. So you were a driver?

18 A. Yes.

19 Q. Does this position require a CDL?

20 A. Yes.

21 Q. And you said you were working out of New  
22 York?

23 A. No, New Brunswick, New Jersey.

24 Q. New Brunswick. When did you apply for this

Marlayna G. Tillman

60

1 test and a road test, and if you passed that, then  
2 they employ you.

3 Q. Weren't you employed by Pepsi in November of  
4 2004?

5 A. Yes.

6 Q. So how is it that you were holding two jobs  
7 at the same time?

8 A. As far as what? I don't understand.

9 Q. Let me back up.

10 Was the J.B. Hunt job a full-time job?

11 A. Yes.

12 Q. And what were the hours there?

13 A. They changed also.

14 Q. What position were you holding at Pepsi at  
15 that time?

16 A. The same position in transport.

17 Q. So the job you had at Pepsi and the job you  
18 had at J.B. Hunt were basically the same job?

19 A. Yeah, you could say that.

20 Q. And the job at Pepsi was a full-time job as  
21 well?

22 A. Um-hum.

23 Q. Okay. So how were you able to coordinate  
24 those two schedules?

Marlayna G. Tillman

61

1 A. Because I wasn't at Pepsi in November.

2 Q. You resigned?

3 A. No.

4 Q. How is it that you were not at Pepsi in  
5 November?

6 A. I had a doctor's note releasing me from duty  
7 with Pepsi.

8 Q. What was the basis for that doctor's note?

9 A. Stress leave, stress-related leave.

10 Q. Stress-related leave from working at Pepsi  
11 but not working anywhere else?

12 A. Correct.

13 Q. When you started working at J.B. Hunt how  
14 long had you had your CDL license?

15 A. Um, I guess maybe like two months.

16 Q. Did you tell J.B. Hunt you had your license  
17 28 months?

18 A. 28 months? No, I don't recall that.

19 Q. Okay.

20 What is a straight truck?

21 A. A straight truck is a truck that's not a  
22 tractor-trailer meaning there is no -- there is no  
23 cab and then a trailer that is linked to it. A  
24 straight truck is just a cab that has the full body

Marlayna G. Tillman

67

1 Q. Did you receive unemployment since December  
2 of 2004?

3 A. Unemployment, no.

4 Q. Have you ever received unemployment, well,  
5 let's just say in the last five years?

6 A. Yes.

7 Q. When?

8 A. I believe when I was laid off from Pepsi. I  
9 think it was for approximately four weeks, I think I  
10 received unemployment from the Department of Labor.  
11 I don't know the exact dates.

12 Q. Were you eventually paid those four weeks  
13 through a grievance proceeding by Pepsi?

14 A. Yes, I was.

15 Q. Did you pay back the unemployment you  
16 received from the Department of Labor?

17 A. No.

18 Q. So you kept both the unemployment and the pay  
19 for the same period of time?

20 A. As far as I know.

21 MS. CLEMONS: It's 12 o'clock. Do you  
22 want to take a break now or do you want to go on?

23 MS. BREWINGTON: Do you need a break?

24 THE WITNESS: No.

Marlayna G. Tillman

69

1 stress-related issues due to the job.

2 Q. Okay. When did you consult her?

3 A. I don't recall the exact date.

4 Q. But it's been some time within the last year?

5 A. It was last year, I believe. Oh, wait.

6 We're still in 2005. Earlier this year. You know  
7 what, I don't even want to say that because I don't  
8 know. I don't know.

9 Q. Where is Dr. Farside and Dr. Obeidy's office?  
10 Where are their offices located?

11 A. In I want to say Concord Common on Silverside  
12 Road at Route 202.

13 Q. So they're here in Delaware?

14 A. Yes.

15 Q. So you consulted them after you moved to  
16 Brooklyn?

17 A. No, I believe it was before I moved to  
18 Brooklyn.

19 Q. And you moved to Brooklyn in November of '04;  
20 correct?

21 A. Yes.

22 Q. So this is pre, this is before December of  
23 '04?

24 A. Yeah, I believe so. I don't know the date.

Marlayna G. Tillman

88

1 Q. That's fine. Go ahead. We can take a break.  
2 You can talk to her.

3 (Recess; 12:27 p.m.)

4 - - -

5 (Resumed; 12:29 p.m.)

6 BY MS. CLEMONS:

7 Q. Miss Tillman, are you seeking any  
8 out-of-pocket expenses that you have experienced as  
9 a result of this litigation?

10 A. I don't know how to answer that.

11 MS. CLEMONS: Let's just have lunch.

12 (At 12:30 p.m. a luncheon recess was  
13 taken.)

14 - - -

15 (The deposition resumed at 1:20 p.m.)

16 BY MS. CLEMONS:

17 Q. We're back from lunch, Miss Tillman. I  
18 want you to understand you're still under oath and  
19 my instructions that I gave you this morning still  
20 apply to the continuation of the deposition.

21 Do you understand that?

22 A. Yes.

23 Q. Okay.

24 Miss Tillman, were you ever injured

Marlayna G. Tillman

89

1 while you were working at Pepsi?

2 A. Yes.

3 Q. Please tell me about that.

4 A. I was in one of the Pepsi trucks and upon  
5 exiting the vehicle I I guess twisted a tendon in my  
6 calf and it tore in a couple places.

7 Q. Okay. Did you miss any work as a result of  
8 that?

9 A. Yes.

10 Q. How long were you out of work?

11 A. From November '03 to April '04, I believe. I  
12 don't know the exact date.

13 Q. Did you file a worker's compensation claim in  
14 relation to that injury?

15 A. Yes. I initially did, I believe, and it was  
16 denied and from that point I had to file a  
17 short-term disability claim.

18 Q. Did you file a short-term disability claim  
19 related to that injury?

20 A. Yes.

21 Q. Did you receive money for short-term  
22 disability while you were on that claim?

23 A. Eventually, yes.

24 Q. Did you receive worker's compensation for



Marlayna G. Tillman

90

1 that injury?

2 A. I'm not really sure actually. I don't know  
3 the money that I received, I'm not sure under which  
4 category it fell under. My attorney would know.

5 Q. What do you mean?

6 A. I don't know what it was categorized as.  
7 From what my attorney told me it was money that I  
8 was entitled to.

9 Q. Okay.

10 Tell me what your understanding of filing  
11 a workman's compensation claim is.

12 A. Actually I don't have an understanding of it  
13 really. It's quite vague to me. I guess it's money  
14 given to an employee that's injured on the job.  
15 That's all I can --

16 Q. During this period of time from November '03  
17 to April '04, were you unable to work at Pepsi?

18 A. No.

19 Q. You were able to work?

20 A. I was, at some specific point I did ask to  
21 return to work under light duty.

22 Q. So was there a period of time where you were  
23 totally unable to work?

24 A. Yes.

Marlayna G. Tillman

91

1 Q. Okay. What was that period of time?

2 A. I think it was from November to January.

3 Q. What happened in January that you said  
4 allowed you to be able to work in some capacity?

5 A. My leg was getting better. I was able to  
6 walk without crutches and I asked to come back in a  
7 light duty capacity.

8 Q. So you were not released to return to work,  
9 fully released at full capacity; is that correct?

10 A. Do you mean by my doctor?

11 Q. Yes. Did the doctor say you could return to  
12 work on full duty and you said in January?

13 A. No, I didn't say he released me at that time.

14 Q. No, that's what I'm asking you.

15 A. You know what, I don't know the exact date  
16 when he actually released me to light duty.

17 Q. Do you remember the conversation, the  
18 appointment? I want you to tell me what you  
19 remember about it.

20 A. I don't remember too much about it, honestly.

21 Q. Who was your attorney in that matter?

22 A. Beverly Bove. She also had co-counsel, Eric  
23 Grandell.

24 MS. CLEMONS: Are we up to 10?

Marlayna G. Tillman

92

1 COURT REPORTER: Yes.

2 (Exhibit Tillman-10 was marked for  
3 identification.)

4 BY MS. CLEMONS:

5 Q. I'm going to show you what's been marked as  
6 Tillman-10. Please review the letter and the  
7 attachment and let me know when you're ready to  
8 answer questions.

9 (Pause.)

10 A. I'm ready.

11 Q. Have you ever seen this document or the  
12 documents attached to it before?

13 A. The only document I saw was Page 2.

14 Q. Okay.

15 You saw the document at Page 2?

16 A. Yeah.

17 Q. You never saw the agreements and the receipt  
18 of compensation at the end of these pages?

19 A. No, I did not. In fact, I was going to say  
20 that Page 2 is a, an actual, an altered version of  
21 what I saw meaning I saw the, had a check that was  
22 made out to me, but it wasn't in this amount and it  
23 was from, it was on my attorney's letterhead, so  
24 this is like a different version of some of the same

Marlayna G. Tillman

93

1 information.

2 Q. Okay.

3 So you didn't cash this check?

4 A. Um, this one, no, because they made it out,  
5 it was given to my attorney first. My attorney  
6 signed it on behalf of me and issued me another  
7 check.

8 Q. Okay.

9 So your attorney signed this check and  
10 deposited it?

11 A. I believe so, because this is not the check  
12 that I got.

13 Q. Did you give your attorney permission to sign  
14 this check?

15 A. I can't recall signing any documents that did  
16 that, no.

17 Q. So you're saying you did not cash this check?

18 A. No.

19 Q. And you never saw these two documents  
20 attached at the end of this?

21 A. Never saw it.

22 Q. If you're telling me your attorney never  
23 passed this on to you, will you give us permission  
24 to contact your attorney, because this is clearly,

Marlayna G. Tillman

94

1 did you read the first letter?

2 A. I never saw -- I didn't see this. Eric  
3 Grandell saw this.

4 Q. What I'm saying is, you read this letter;  
5 correct?

6 A. Just now, yes.

7 Q. And you're saying your attorney never  
8 presented this information to you?

9 A. Never presented this information to me.

10 Q. Will you give us permission to talk to your  
11 attorneys about this matter?

12 MS. BREWINGTON: No, we're not going  
13 to give permission for you to talk to them.

14 MS. CLEMONS: If she's saying she's acted  
15 on advice of counsel then we're going to have to go to  
16 the Judge because she's basically saying her attorney  
17 has committed fraud is basically what she's saying.

18 THE WITNESS: I can't confirm or deny  
19 that because I don't know what their intent was, but  
20 I never saw this.

21 MS. CLEMONS: This is a serious  
22 allegation if you're saying your attorney did not  
23 present this information to you.

24 THE WITNESS: It's not an allegation,

Marlayna G. Tillman

95

1 that's a fact.

2 MS. BREWINGTON: What she's saying is  
3 this was not the check that was presented to her,  
4 that her attorney presented her with another check.

5 MS. CLEMONS: But you also see that  
6 there is an agreement that explains what the  
7 compensation is and a receipt for receiving it;  
8 right?

9 THE WITNESS: You don't see my  
10 signature on there.

11 MS. CLEMONS: Miss Tillman, I'm  
12 talking to your attorney. What I'm saying is it  
13 explains exactly what it's for. There are letters  
14 back and forth from her attorney saying exactly what  
15 the compensation was for and if her attorney did not  
16 relay that to her, then that is an issue.

17 MS. BREWINGTON: What is your  
18 question?

19 MS. CLEMONS: My question is did her  
20 attorney relay the information contained in this  
21 document to her and she's saying no.

22 THE WITNESS: My answer is no.

23 MS. BREWINGTON: What information are  
24 you talking about?

Marlayna G. Tillman

96

1 MS. CLEMONS: About the amount of the  
2 check, what it was for, what the agreement  
3 contained, the information contained in this letter  
4 and its attachments.

5 THE WITNESS: So the whole thing as a  
6 whole, you're asking me did I see any of this?

7 MS. CLEMONS: I'm not asking if you saw  
8 it. You said you didn't see it. I'm asking did the  
9 attorney convey the information that's contained in  
10 these documents and attachments to you?

11 THE WITNESS: As it's here, no.

12 BY MS. CLEMONS:

13 Q. Did you give your attorney permission to  
14 settle a worker's compensation claim for you?

15 A. Um, again, I sought counsel from this  
16 attorney and I retained this attorney. As to what  
17 I, you know, actually gave her permission to do, um,  
18 I'm unclear on that because I don't know what she  
19 actually did, to be quite honest.

20 Q. I'm not asking you what she did. I'm asking  
21 you what you gave her permission to do.

22 A. To represent me. I gave Beverly Bove  
23 permission to represent me. I retained Beverly  
24 Bove. She put Eric Grandell on the case.

Marlayna G. Tillman

97

1 Q. And what I'm asking you is, did they consult  
2 you before they agreed to settle your claim?

3 A. In what capacity? I know that --

4 Q. About the terms of the settlement.

5 A. No.

6 MS. CLEMONS: I've got to go get  
7 another document.

8 (Pause.)

9 (Exhibit Tillman-11 was marked for  
10 identification.)

11 BY MS. CLEMONS:

12 Q. I'm showing you what's been marked as  
13 Deposition Exhibit 11.

14 Miss Tillman, have you ever seen  
15 Deposition Exhibit 11 before?

16 A. I believe I did see this.

17 Q. Tell me what it is.

18 A. It's an outline of settlement terms.

19 Q. How did you receive this letter?

20 A. I don't recall. I don't recall if I went  
21 into the office for this or if it was mailed to me.

22 Q. Okay. So --

23 A. And I'm not sure if this is the exact  
24 document. It may have been another document that



Marlayna G. Tillman

98

1 kind of outlined similar information.

2 Q. Are you saying that in some way the  
3 information contained in this letter was relayed to  
4 you?

5 A. In some of it, yes.

6 Q. What was relayed to you?

7 A. That they were investigating whether I paid  
8 into a disability fund and that will determine  
9 whether the amount of 7,700 was back owed by me or  
10 if I was entitled to receive it because that was at  
11 issue.

12 Q. Anything else in this letter relayed to you?

13 A. Not that I recall.

14 Q. You don't recall that the information about  
15 you were being paid workers' comp. for a period of  
16 total disability from November of 2003 to April of  
17 2004 was related to you?

18 A. I'm sorry. Rephrase that for me.

19 Q. What was your understanding of why you were  
20 receiving disability money?

21 A. Again, that's the part that's unclear to me.  
22 I don't know why I received that money. My attorney  
23 did not make that clear to me, did not specify to me  
24 what that money was for.

Marlayna G. Tillman

107

1 Q. Did you file a workers' compensation claim  
2 for that injury?

3 A. No.

4 Q. Any other injuries?

5 A. Not that I can recall. You know what, now  
6 that I'm thinking about it, this probably needs to  
7 be on the record, when you are injured at work, at  
8 Pepsi, you're required to call 1-800 Job Hurt, which  
9 is a number that Pepsi gives for their employees to  
10 call.

11 That can be what generates a claim and  
12 probably that is because I physically don't recall  
13 making any claim, but I do recall after having an  
14 injury having to call 1-800 Job Hurt for any type of  
15 injury sustained on the job. Now, that may be where  
16 it originated from, but again because I'm not  
17 familiar with the process I wouldn't know.

18 Q. But you don't recall filling out a workers'  
19 compensation claim?

20 A. I don't recall.

21 Q. Okay.

22 When did you start working at Pepsi?

23 A. May of 2001.

24 Q. What position were you hired into?

Marlayna G. Tillman

108

1 A. Merchandiser position.

2 Q. How long were you in that position?

3 A. Until I think July 2002.

4 Q. What was the next position you assumed?

5 A. Warehouse position.

6 Q. How long were you in that position?

7 A. I guess in some form until November of 2004.

8 I mean, I'm sorry, September 2004, correction.

9 Q. What position did you apply for in September  
10 of 2004?

11 A. A driver position, a transport driver  
12 position.

13 MS. CLEMONS: I'm sorry, I missed  
14 that, if you could just go back. We had the  
15 merchandiser from May '01 through?

16 THE WITNESS: July 2002.

17 MR. GELMAN: What was the one after  
18 that?

19 MS. CLEMONS: Warehouse person.

20 MR. GELMAN: And what were the dates?

21 THE WITNESS: July 2002 to I guess  
22 September 2004.

23 MR. GELMAN: Okay, fine. My  
24 apologies.

Marlayna G. Tillman

109

1 BY MS. CLEMONS:

2 Q. And what were your duties as a merchandiser?

3 A. To visit different locations, stores, retail  
4 outlets, to make sure that the Pepsi product was on  
5 the shelves, make sure that they have, you know,  
6 sufficient quantities in their back stock.

7 Q. Anything else?

8 A. As far as merchandising, no.

9 Q. What about warehouse?

10 A. Warehouse was basically building pallets of  
11 product. I was kind of like a floater. I did  
12 several different things in the warehouse including  
13 production work.

14 Q. What does that mean?

15 A. Basically, um, I guess where they actually  
16 manufacture the soda, working on the bottle and can  
17 lines, what else, operated a forklift, I loaded  
18 trucks, loaded route trucks, loaded bulk trucks,  
19 built bulk load, just about every facet of the trade  
20 in the warehouse. But I would also like to back up  
21 for a minute to my merchandising position.

22 Q. Miss Tillman, there is no question pending  
23 about the merchandising position. I will get back  
24 to it and I will let you answer, but right now I

Marlayna G. Tillman

113

1 did deliveries.

2 A. I did deliveries with the other Pepsi workers  
3 in the conventional department. I did what was  
4 called cooler resets at different --

5 Q. Is that the same thing as you're saying did  
6 deliveries or is that a different --

7 A. No, they're independent.

8 Q. Tell me what you mean when you say you did  
9 deliveries. Tell me what you would do.

10 A. Deliveries means I would ride with another  
11 Pepsi employee to a location, say Saturn, Saturn,  
12 the car manufacturing plant, and we would open up  
13 the bays of the truck and pull off product and take  
14 it into their location for use in their vending  
15 machines, their cafeteria, wherever, you know, they  
16 required it, the product to be at. That's one thing  
17 that I did.

18 Q. Okay.

19 A. I did cooler resets, which means you travel  
20 to different stores, 7-Eleven, Wawa, mom and pop  
21 stores. You go into their cooler where our product  
22 is kept and you pull everything out and reset the  
23 shelves and put everything back in in a orderly  
24 fashion based on what our core requirements were at

Marlayna G. Tillman

114

1 that time.

2 Q. Okay.

3 A. I did vending machine, full-service vending  
4 machine refills, going to the different locations,  
5 MBNA, going to the cafeteria, opening up the  
6 machines, refill them with soda as part of my  
7 conventional duties. What else did I do?

8 Q. Is that not the same thing as one of the  
9 primary job duties as set forth?

10 A. No, that's a little different.

11 Q. Merchandising a store?

12 A. Merchandising basically was supermarket work.  
13 You go into a Pathmark or, you know, Shop Rite,  
14 Super G, and you go to the back stock room and you  
15 put all your soda on a cart and you roll it out to  
16 the shelves and stock the shelves.

17 Q. That's what a merchandiser's basic primary  
18 function was. Like I said, I did that and then  
19 some, which was what I just outlined before.

20 Q. So you told me about doing deliveries, doing  
21 cooler resets and then full service vending  
22 machines.

23 Anything else?

24 A. I'm sure there were other things. Like I

Marlayna G. Tillman

118

1 to do which required me to drive the Pepsi van.

2 Q. So every other day then?

3 A. If you want to call it that. It was frequent  
4 enough.

5 Q. I don't want to call it anything. I want you  
6 to tell me how often you were out on the truck.

7 A. I can't quote you specific exact times, just  
8 like I haven't been able to quote you anything  
9 specific. You're asking me to remember stuff from  
10 three years ago.

11 Q. You filed a lawsuit about these issues and I  
12 have to ask you about them and so you have to tell  
13 me, to the best of your recollection, what you  
14 remember.

15 A. That's my recollection.

16 Q. So now you're saying it's not every day?

17 A. I said I will be liberal and say --

18 Q. Probably half the time?

19 A. Half and half if I wasn't out on a trip. I  
20 might have been out on a trip Monday, Wednesday and  
21 Friday and doing research on Tuesday and Thursday,  
22 or it might have flipped and I was doing resets on  
23 Monday, Wednesday and Friday.

24 Q. Anybody else you went out on a truck with

Marlayna G. Tillman

126

1 if he was absent, Bob Ziegler and Scott Johnson were  
2 like fill-in supervisors.

3 Q. What was Bruce Wray's position?

4 A. I don't know his exact title. I just figured  
5 he was the merchandiser supervisor.

6 Q. How about Craig Nelson?

7 A. Craig Nelson was the conventional department  
8 supervisor.

9 Q. Do you know what his title was?

10 A. No.

11 Q. How about Bob Ziegler and Scott Johnson, do  
12 you know what their titles are?

13 A. They're the same as Bruce, I thought. I  
14 don't know.

15 Q. How about while you were a warehouse person,  
16 who was your supervisor?

17 A. Tom Riley.

18 Q. Anyone else?

19 A. Sometimes we took direction from Glen  
20 Matthews.

21 Q. But he wasn't your supervisor or he was?

22 A. I don't think he was because I didn't have  
23 too much interaction with him. It was usually with  
24 Tom and if I was working nighttime it would be like



Marlayna G. Tillman

128

1 A. There were other people on the floor, but  
2 more or less, we didn't like directly come in and  
3 say, Oh, Tom, what am I going to do today. We  
4 already knew. We would just come in. Tom ran the  
5 department during that time --

6 Q. Okay.

7 A. -- and we'd do our work.

8 Q. Was there anybody who reported to Tom who  
9 also gave you direction is what I'm trying to find  
10 out.

11 A. Sure.

12 Q. Who?

13 A. Those two people I mentioned, Glen Matthews,  
14 John O'Barra, Lou Capelli, Bob Grundy. It just  
15 depended on what shift you were on. These guys came  
16 in and out different shifts.

17 Q. So did Glen Matthews, John O'Barra, Lou  
18 Capelli and Bob Grundy, did they hold the same  
19 position?

20 A. I don't know what their title was. I know  
21 they were supervisors. I don't know what their  
22 title was.

23 Q. Those four people were supervisors?

24 A. As far as I know, yes.

Marlayna G. Tillman

136

1 Q. It's the Charge of Discrimination.

2 Q. Do you have that now?

3 A. Yes.

4 Q. Starting at the beginning of the document it  
5 says, "I am a black female individual who has been  
6 employed by respondent since May 8th, '01." Then it  
7 says, "Since or about October 1, '01 and continuing  
8 to present, the respondent has denied me various  
9 promotional opportunities, particularly for driver  
10 positions."

11 Please describe to me every promotional  
12 opportunity that you contend you were denied while  
13 working at Pepsi.

14 A. There were several different driver  
15 positions. Delivery driver position was posted.

16 Q. Tell me when they were posted and what the  
17 positions were.

18 A. I don't know the exact dates of when they  
19 were posted.

20 Q. Give me an approximation or something. You  
21 filed a claim saying you were denied a promotion.  
22 We have to be able to defend that claim, therefore  
23 we have to know what you're claiming you were  
24 denied, so you have to tell me what it is that this

Marlayna G. Tillman

137

1 claim is based on.

2 A. Again, there were driver positions that were  
3 posted that --

4 Q. Which year? Around what time? What position  
5 were you in? You have to give me something more  
6 than positions that were posted.

7 A. Okay. Driver positions in 2001, 2002, 2003  
8 and actually 2004. Eventually we got to the part  
9 where I did get the position.

10 Q. Are these transport driver positions?

11 A. No. There were some that were delivery  
12 driver positions, also transport. There were other  
13 postings that I applied for during all those years.

14 Q. I'm not talking about, I want to talk about  
15 the driver positions one at a time. Let's do it one  
16 at a time.

17 You said delivery driver position?

18 A. Um-hum.

19 Q. When did you apply for that position?

20 A. Again, I have that information, but I don't  
21 have it at hand.

22 MS. BREWINGTON: Can I interject?

23 MS. CLEMONS: Yes.

24 THE WITNESS: Do you want me to make it

Marlayna G. Tillman

138

1 up?

2 MS. BREWINGTON: No. Would reviewing  
3 the Complaint help refresh your recollection?

4 THE WITNESS: No, because it's not  
5 listed in there. It's not listed. But again, like  
6 I said, there were positions posted in 2001, '2,  
7 2002, 2003.

8 BY MS. CLEMONS:

9 Q. Are you telling me you applied for every  
10 delivery driver position that was posted in those  
11 years?

12 A. There were probably only two and I did apply  
13 for them. There was a full service vending position  
14 that was posted.

15 Q. I want to take it position by position. I  
16 need you to do it the way --

17 A. That requires driving.

18 Q. Is it considered a delivery? You said a  
19 delivery driver position. Is that the title of the  
20 position or is that just --

21 A. Yes. That's the title of one of the driving  
22 positions, yes.

23 Q. You say you think you applied for that job  
24 twice?

Marlayna G. Tillman

139

1 A. Yes.

2 Q. You don't remember which of the four years we  
3 just went through that you applied for those  
4 positions?

5 A. I think one was in 2001 and one was in 2002.

6 Q. Okay. How did you apply for the position?

7 A. With a bid form.

8 Q. In 2001 you applied with a bid form?

9 A. I believe so.

10 Q. Were you a member of the union in 2001?

11 A. I should have been, but no, I wasn't.

12 Q. My question was, were you a member of the  
13 union in 2001?

14 A. And my answer was I should have been, but I  
15 was not.

16 Q. Were you a dues paying member of the union?

17 A. No, because I was not allowed to become one.

18 Q. Did you pay any dues?

19 A. No, because I wasn't allowed to become a  
20 member of the union.

21 Q. So you submitted a bid form in '01?

22 A. Yes.

23 Q. In what other year?

24 A. I believe 2002.

Marlayna G. Tillman

140

1 Q. Any other position other than the delivery  
2 driver that you applied for that you claim you were  
3 denied a promotional opportunity?

4 A. Full service vending driver.

5 Q. When did you apply for that job?

6 A. I believe that was in 2002.

7 Q. And how did you apply for that job?

8 A. Bid form.

9 Q. By the way, who was awarded the delivery  
10 driver positions?

11 A. I don't know off the top of my head.

12 Q. Were they people already within the union?

13 A. I'm not sure. It might have been. I'm not  
14 sure.

15 Q. To your knowledge are jobs awarded based on  
16 seniority in union positions?

17 A. I believe so.

18 Q. Any other jobs you applied for that you claim  
19 you were denied promotional opportunity?

20 A. I applied for, I'm not sure of the title, the  
21 exact title, but I believe it was jockey.

22 Q. In what year did you apply for that job?

23 A. I think that was also 2002.

24 Q. And how did you apply for that job?

Marlayna G. Tillman

141

1 A. Bid form.

2 Q. Who was awarded that position?

3 A. Gary DiProsperos.

4 Q. Was he a member of the union?

5 A. I believe so, yes.

6 Q. Did he have more seniority than you?

7 A. I don't know the answer to that only because  
8 Gary was a transfer from a different Pepsi plant, so  
9 I don't know what his status was or how many years.

10 Q. Was he working at the plant when you began  
11 working in the warehouse?

12 A. I don't know if he came before or after me.  
13 I don't know.

14 Q. Any other positions?

15 A. I applied for loader. I'm trying to think.  
16 Loader, I think that was it.

17 Q. How many times did you apply for the loader  
18 position?

19 A. Um, I think that was posted twice actually.  
20 That was a couple of times.

21 Q. And in which years?

22 A. I believe it was 2003. I think both of them  
23 were in 2003.

24 Q. Who were awarded the positions?

Marlayna G. Tillman

142

1 A. I think -- you know, I can't be sure, but I  
2 think it was Chris Eastlack and Leroy Lewis.

3 Q. Did Mr. Eastlack and Mr. Lewis have more  
4 seniority than you did?

5 A. Yes.

6 Q. Who was awarded the full service vending  
7 position? Did I ask you that?

8 A. I think they brought somebody in from another  
9 plant. I think they brought in Mike Shimmel from  
10 the West Chester location. Actually I'm not a  
11 hundred percent sure.

12 Q. Was he a member of 830?

13 A. I believe so.

14 Q. Do you know if he had more seniority than you  
15 did?

16 A. I'm pretty sure he did.

17 Q. Any other positions?

18 A. Not that I can recollect right now.

19 Q. You've told me about the delivery driver  
20 which you said you applied for twice, the full  
21 service vending driver, the jockey and the loader  
22 which you applied for twice.

23 Anything else you can recall?

24 A. Well, transport. I applied for a transport



Marlayna G. Tillman

145

1 have been hired before got the job?

2 A. No, I didn't say that.

3 Q. Okay. So then what are you telling me?

4 Because I'm asking you about these jobs and if you  
5 filed a grievance in relation to your application  
6 with any of these positions.

7 A. I'll have to research my grievances.

8 Q. I'm asking you.

9 A. I'll have to research it. I don't want to  
10 quote something and not be clear on it.

11 Q. Are you saying you don't recall if you did,  
12 you don't know if you did? Yes or no. I mean,  
13 either you did or you didn't or you don't remember.

14 A. Relax. Try decaf.

15 I will review my records and I'll let  
16 you know. Right now I don't recall.

17 Q. Starting with the delivery driver position,  
18 tell me what facts you have personal knowledge of  
19 that would lead you to believe you were denied that  
20 job based on your race or your sex.

21 A. Basically just the fact that I was the only  
22 female in that department and that I applied and I  
23 had experience based on my work in the conventional  
24 department and based on the fact that it was always

Marlayna G. Tillman

146

1 awarded to somebody else other than myself.

2 Q. Anything else?

3 A. No.

4 Q. How about for the full service vending  
5 position, what facts are you aware of that support  
6 your contention that you did not receive that  
7 position based on your race or sex?

8 A. The same answer.

9 Q. Because you were the only female in the  
10 department, because you had experience and it was  
11 awarded to someone else?

12 A. Yes.

13 Q. The same question, jockey position.

14 A. Pretty much the same answer.

15 Q. The loader position?

16 A. The same answer.

17 Q. An transport driver position?

18 A. Same answer.

19 Q. Are you aware of anyone else who would have  
20 any knowledge of facts that would support your  
21 contention that you were denied promotional  
22 opportunities based on your race or sex?

23 A. I would have to say Peyton Spencer was a  
24 person that offered some information regarding --

Marlayna G. Tillman

152

1 MS. BREWINGTON: Okay. The question  
2 has been asked and answered.

3 MS. CLEMONS: You've got to be kidding  
4 me.

5 THE WITNESS: You've got to be kidding  
6 me, too.

7 BY MS. CLEMONS:

8 Q. Have you now told me all the facts and every  
9 person you know who may possess facts that support  
10 your claim that you were denied promotional  
11 opportunities based on your race or sex?

12 A. As far as I know, yes.

13 Q. A little further down in your charge you say,  
14 "My supervisors, Glen Matthews and Tom Riley, hold  
15 me to a higher standard than my white male  
16 co-workers with regard to rules and regulations."

17 A. Uh-huh.

18 Q. Tell me the basis for your allegation that  
19 you were held to higher standards than your white  
20 male co-workers.

21 A. Because if you look at me --

22 Q. Miss Tillman, I want you to testify from your  
23 memory. Okay? Tell me what you remember.

24 A. I remember being verbally reprimanded, called

Marlayna G. Tillman

153

1 into the office for a procedure called walking the  
2 dog. At the time this happened there were white  
3 male co-workers doing the very same thing when I was  
4 in the office being reprimanded, which I pointed out  
5 to Tom Riley.

6 I was threatened with termination.  
7 Nobody else got called up to the office for that,  
8 even though you could look down on the floor and see  
9 guys walking the dog.

10 Q. Anything else?

11 A. That's holding me to a higher standard, I  
12 think.

13 Q. Anything else?

14 A. I was basically reprimanded for not being a  
15 team player by Tom and Glen, more or less saying I  
16 wasn't coming to the assistance of other employees  
17 that needed help, and actually when they brought me  
18 into the office to tell me this, they had forms  
19 ready to write me up for that so-called infraction.

20 Q. What so-called infraction?

21 A. Not being a team player, not helping the  
22 other guys out, walking the dog, whatever they were  
23 going to write me up for. They had paperwork  
24 sitting right there on the desk because apparently

Marlayna G. Tillman

154

1 they had already decided that this was something  
2 they were going to write me up for.

3 Q. Anything else, Miss Tillman?

4 A. Anything else you want to know? That's about  
5 it.

6 Q. I want to know what the basis of your claim  
7 is that you were held to a higher standard than your  
8 white male co-workers and you've told me two things.

9 Is there anything else?

10 A. When I requested a transfer I wasn't allowed  
11 to have a transfer.

12 Q. Requested transfers to who?

13 A. To Tracey, whereas other employees have, you  
14 know, come and gone and been able to go into  
15 different positions in different areas when they  
16 requested that, so --

17 Q. Anything else?

18 A. No, not off the top of my head.

19 Q. This is the time. This is the deposition.

20 A. I can't think of anything now.

21 Q. And it's our opportunity to ask you questions  
22 about your lawsuit. Is there anything else you  
23 recall?

24 A. Not right now.

Marlayna G. Tillman

155

1 Q. You said you were verbally reprimanded for  
2 walking the dog. Tell me about that.

3 A. Basically I was, you know, building my  
4 pallets and Tom Riley called me into his office and  
5 he said that he observed me walking the dog and that  
6 it was a safety hazard and if he ever saw me doing  
7 it again he would terminate me right on the spot.

8 Q. Anything else?

9 A. Yeah. I pointed out to him, we were looking  
10 out of the window, overhead window, that there were  
11 several people down on the floor at that time doing  
12 the exact same thing. That's where I learned the  
13 technique from, from my co-workers, who did it all  
14 the time.

15 Q. Anything else happen in that conversation?

16 A. Yeah. After that Tom called a quick  
17 conference because he wanted to explain to everybody  
18 now that there was no more walking the dog, but  
19 first he had to reprimand me first.

20 Q. He called you into his office. Was there  
21 anyone else there?

22 A. No.

23 Q. Did he give you a formal written reprimand  
24 for this?

Marlayna G. Tillman

156

1 A. No. He was going to, but he did not.

2 Q. How do you know he was going to?

3 A. Because he had paperwork in his office, a  
4 write-up, a pending write-up, and once I pointed out  
5 to him that other people were doing it, I guess that  
6 shot his plan.

7 Q. Miss Tillman, did you see a write-up that was  
8 written out with your name on it?

9 A. Yes, I saw a write-up and then he got rid of  
10 it.

11 Q. Was there any change in your salary as a  
12 result of this verbal, this conversation or incident  
13 you just talked about?

14 A. A change in my salary?

15 Q. Yes.

16 A. Not that I know of.

17 Q. Was there a change in your hours?

18 A. My hours always changed.

19 Q. What I'm saying is, you said that he called  
20 you in and gave you a verbal and told you not to do  
21 this anymore?

22 A. Um-hum.

23 Q. As a result of that were your hours changed?

24 A. I don't know how to answer that because again

Marlayna G. Tillman

157

1 my hours, I don't know if it was changed as a direct  
2 result of that. My hours changed all the time.

3 Q. Was there a change in your schedule?

4 A. Yeah. My hours changed all the time.

5 Q. As a result of getting this --

6 A. I don't know that.

7 Q. Were you transferred from your position as a  
8 result of this incident?

9 A. You have to define transfer because I didn't  
10 work in the same department all the time. I could  
11 be the next day in production and the next day I  
12 could be, you know, back on the floor loading  
13 trucks. The next day I could be building pallets.  
14 The next day I could be, you know --

15 Q. So that happened all the time is what you're  
16 saying?

17 A. Yes. So define transfer.

18 Q. Were you told we're transferring you because  
19 of this incident?

20 A. No.

21 Q. Did you lose any seniority as a result of  
22 this incident?

23 A. No, I don't think so.

24 Q. Obviously, you weren't fired for this



Marlayna G. Tillman

158

1 incident; right?

2 A. No.

3 Q. And you said that Tom called a meeting with  
4 the rest of the warehouse?

5 A. Yeah, as an afterthought, yes.

6 Q. And what did he say at that meeting?

7 A. He told all the guys that nobody else was to  
8 walk the dog anymore.

9 Q. Hadn't Tom said that in previous meetings  
10 that no one should be walking the dog, as it's  
11 called?

12 A. Not in my previous meeting I was in.

13 Q. Had you recently arrived at the warehouse?

14 A. Yes.

15 Q. So for all you know he had discussed it at  
16 previous meetings?

17 A. I don't know that he did, not at any meeting  
18 I was at.

19 Q. But he did tell the others in that meeting  
20 that they should not be walking the dog; right?

21 A. Afterwards, after he reprimanded me, yes, he  
22 did.

23 Q. Did anyone else hear him reprimanding you?

24 A. No, nobody else. He called me specifically.

Marlayna G. Tillman

159

1 He picked me out of the crowd and brought me into  
2 the office.

3 Q. Okay.

4 And Tom is black; isn't that right?

5 A. Yep.

6 Q. Anything else about that incident you have  
7 not told me?

8 A. Not that I'm aware of.

9 Q. I'm sorry?

10 A. Not that I'm aware of.

11 Q. And you did file a grievance about that  
12 incident; isn't that correct?

13 A. Um-hum. No, no. I filed a discrimination  
14 complaint.

15 Q. You didn't file a grievance about this issue  
16 with Tom Riley?

17 A. Um, no, I don't think I did. I went straight  
18 to the Department of Labor with that.

19 Q. The next thing you told me about is you were  
20 reprimanded for not being a team player. Tell me  
21 about that.

22 A. More or less we were building bulk pallets  
23 and, um, when you, you know, finish whatever your  
24 allotted amount of builds are, you know, most of the

Marlayna G. Tillman

160

1 guys just go home or whatever, and I was told that,  
2 you know, I left and didn't help anybody else, which  
3 was totally false. It was a falsehood. I helped a  
4 couple of people build pallets before I left for the  
5 evening, and I explained that to Glen Matthews.

6 Q. Okay. Is that the entire incident?

7 A. As far as that goes, for not being a team  
8 player, yeah.

9 Q. Where did this conversation occur?

10 A. In the upstairs warehouse office.

11 Q. So it was just you and Glen Matthews?

12 A. Tom Riley was also there.

13 Q. Did Tom say anything?

14 A. Not when I was talking to Glen, no, because  
15 Tom just kind of sat in. He didn't really have  
16 anything to say.

17 Q. And what did you say?

18 A. I told Glen more or less that, you know, he  
19 had his facts wrong and that I was helping a couple  
20 people on the floor before I left for the evening.

21 Q. Did you receive any kind of formal reprimand  
22 for this?

23 A. No.

24 Q. Was your salary changed?

Marlayna G. Tillman

161

1 A. Not that I know of.

2 Q. Was there any change in your hours that you  
3 know of as a result of this reprimand?

4 A. Again, I don't know if it was as a result,  
5 but my hours always changed.

6 Q. I'm asking you to your knowledge. Every  
7 question is to your knowledge. Was your schedule  
8 changed as a result of this incident?

9 A. I don't know that it was or was not.

10 Q. Okay.

11 Were you transferred as a result of  
12 this incident?

13 A. Again, we're going over the same issues.

14 Q. This is a different question. I asked you  
15 that question about the previous incident and now  
16 I'm asking you that question about this incident.

17 A. But transferring, again, I worked in  
18 different departments. You could say that I was  
19 transferred if they transferred me down to the  
20 production room. You could say I was transferred if  
21 I was transferred out to do yard work, you know what  
22 I mean, so --

23 Q. I'm asking you, to your knowledge were you  
24 transferred as a result of this incident?

Marlayna G. Tillman

162

1 A. I can't --

2 Q. If you don't know, then the answer is I don't  
3 know, but that's my question.

4 A. Well, I don't know.

5 Q. Okay. That's a perfectly acceptable answer.

6 Did you lose any seniority as a result  
7 of this incident?

8 A. Not to my knowledge.

9 Q. The last thing you told me about was you said  
10 there was a transfer request you made to Tracey.  
11 Tell me about that.

12 A. A couple of times. I also made that same  
13 request to Scott Steiger.

14 Q. You said Tracey first, so tell me first about  
15 when you made the request to Tracey.

16 A. That's when Tracey first came to the  
17 Wilmington facility. She knew about some of the  
18 problems that I was having with management and I  
19 told her I just didn't feel comfortable being the  
20 only female at the plant. I felt like I was in a  
21 hostile work environment. I felt like I wasn't  
22 wanted there and I wasn't wanted there by the  
23 supervisors, and I asked her to visit the  
24 possibility of me getting a transfer to anywhere,

Marlayna G. Tillman

163

1 any other Pepsi, just, you know, I just wanted to go  
2 somewhere else where I wouldn't be the only female  
3 in the department.

4 Q. And you're saying this was during a  
5 conversation with Tracey?

6 A. Yes.

7 Q. And what did Tracey say in response to that?

8 A. That was something that she could look into.

9 Q. You're saying this is when Tracey first  
10 arrived?

11 A. Yes. And we had another conversation about  
12 it also with Scott Steiger where we had a meeting  
13 together.

14 Q. Hold on. Let's finish up the first  
15 conversation with Tracey.

16 What did she say? What did she say she  
17 would do? What was the result of the conversation?

18 A. There was no result. If you're talking about  
19 an action, a course of action, there was none. She  
20 said she would look into it and she just never got  
21 around to doing anything about it obviously because  
22 I'm still there.

23 Q. Did you apply for positions anywhere else?

24 A. No, not -- well, you know what, I looked into

Marlayna G. Tillman

164

1 going, the possibility of going to West Chester, and  
2 I remember trying to set up something where I could  
3 talk to John West, but that never came to fruition  
4 either, so --

5 Q. I'm confused by your answer. Did you apply  
6 for a position at West Chester?

7 A. No, I didn't formally apply. I was basically  
8 just trying to get information on what was available  
9 at the West Chester plant.

10 Q. Did you ever meet with him?

11 A. No.

12 Q. So have you told me everything you recall  
13 about this first request to Tracey for information  
14 about a transfer?

15 A. As far as I know.

16 Q. Did you make any additional requests to  
17 Tracey for information about a transfer?

18 A. Not until we had a meeting with Scott  
19 Steiger.

20 Q. And when was that?

21 A. I think it was some time in August, August  
22 2002. I'm not real clear on that.

23 Q. And what happened at that meeting?

24 A. Basically we were just discussing, you know,

Marlayna G. Tillman

165

1 Q. I want you to tell me what the conversation  
2 was about transfer, what you said, what they said,  
3 and if you don't know verbatim, that's fine, but  
4 give me the gist of what the conversation was.

5 A. As far as transfer goes?

6 Q. Yes.

7 A. I talked with Scott. Tracey really didn't  
8 have anything to say at that meeting, it was  
9 basically Scott.

10 Scott told me that he felt a transfer  
11 was not needed, I just needed to resolve whatever  
12 issues that I had at the Wilmington plant, and so  
13 therefore, you know, a transfer wasn't really a  
14 viable solution.

15 Q. Did Scott tell you that you wouldn't be  
16 permitted to transfer?

17 A. No, but by the tone and the way he spoke to  
18 me in the conversation it seemed like he was  
19 alluding to that, you know, there was no chance for  
20 me to get a transfer.

21 Q. Did he ever tell you not to apply for  
22 positions at other plants?

23 A. No.

24 Q. Did you ever --



Marlayna G. Tillman

166

1 A. But I never asked him could I either.

2 Q. Did you ever apply for any other positions  
3 outside of the Wilmington plant?

4 A. No. I applied for everything else inside the  
5 plant, trying to get out of the warehouse.

6 (Exhibit Tillman-17 was marked for  
7 identification.)

8 BY MS. CLEMONS:

9 Q. I'm showing you what's been marked Deposition  
10 Exhibit 17.

11 Take a minute and review that.

12 (Pause.)

13 Q. Have you had a chance to read the first  
14 paragraph of this document, the paragraph titled  
15 one, Miss Tillman?

16 A. Um-hum, yes.

17 Q. Does this refresh your recollection as to a  
18 conversation you had with Tracey about moving to a  
19 different facility?

20 A. Yeah. That was much later than the first  
21 conversation, but yes.

22 Q. So is this a separate conversation from the  
23 two you've already told me about?

24 A. Yeah.

Marlayna G. Tillman

172

1 your race or sex?

2 A. It was probably based on the claims that I  
3 filed. That's where the retaliation comes in.

4 Q. So you --

5 A. I believe I was denied promotions based on my  
6 filings with the DDOL.

7 Q. You were denied --

8 A. Promotions.

9 Q. We're talking about transfers right now. Are  
10 we talking about -- I want to talk about transfers.  
11 If you want to tell me something about promotions,  
12 we can go back and talk about promotions, but I  
13 asked you to tell me everything that formed your  
14 basis about your claim for promotions and you didn't  
15 say anything about retaliation. We can go back  
16 there, but I'm asking you now about transfers.  
17 Okay?

18 Tell me what it is that you believe  
19 that --

20 A. I believe that because I filed the charges  
21 that my work environment was made increasingly  
22 hostile towards me. Anything that I --

23 Q. Conclusions don't help me. I need you to  
24 tell me the facts. I'm asking you about facts.

Marlayna G. Tillman

177

1 and regulations?

2 A. As far as I know, yes.

3 Q. In this charge you also claim that you were  
4 paid lower wages than your white male co-workers for  
5 the same work.

6 Please tell me what the basis of your  
7 claim is.

8 A. Exactly that. When I came into the  
9 department I was making a lower wage than my white  
10 male counterparts.

11 Q. Which department? You held three different  
12 jobs, so tell me which jobs you're talking about,  
13 what salary.

14 A. The warehouse department.

15 Q. Warehouse?

16 A. When I was a union worker. When I was in the  
17 conventional department when I was a union worker  
18 doing union work, I should say.

19 Q. Okay.

20 A. I still was held at the same rate as a  
21 merchandiser.

22 Q. Please tell me, you're talking about two  
23 different times then? You're saying when you were a  
24 merchandiser and when you were in the warehouse?

Marlayna G. Tillman

178

1 A. Um-hum.

2 Q. Let's start with when you were in the  
3 warehouse.

4 Tell me what facts you have that  
5 support your claim.

6 A. Pay stubs.

7 Q. Tell me what you were paid versus what you  
8 say your co-workers were paid. Tell me who they  
9 were and what positions they held.

10 A. The Department of Labor did that  
11 investigation. They have that information on who  
12 was paid what versus mine, my salary.

13 Q. Miss Tillman, you made this allegation. Tell  
14 me who it is you contend that you were paid less  
15 than.

16 A. The warehouse workers. Pick one.

17 Q. You're saying all warehouse workers?

18 A. Throw a dart at the dartboard. Whose ever  
19 name comes up run the payroll records.

20 Q. You contend that you were paid less than all  
21 your male counterparts the entire time you worked in  
22 the warehouse?

23 A. I didn't say the entire time. You just said  
24 that.

Marlayna G. Tillman

179

1 Q. Then tell me what you're talking about.

2 A. I just told you what I was talking about.

3 Q. Tell me what period of time you contend while  
4 you were working at the warehouse you were paid less  
5 than your white male co-workers.

6 A. As soon as I came into the warehouse.

7 Q. Tell me when.

8 A. If that's July 2002. I don't know when my  
9 level of pay changed. They have that information.  
10 I can dig it up.

11 Q. What is the level of pay you're contending  
12 that you were paid and they were paid?

13 A. I was paid I think 12.68 and the warehouse  
14 guys were between 15.75 and 16 something, 16.63,  
15 whatever.

16 Q. Are you contending you were the only  
17 warehouse worker that was paid 12.68?

18 A. At that time, yes.

19 Q. What if I could show you documents that there  
20 were two other male employees who were paid exactly  
21 the same rate?

22 A. Okay.

23 Q. Would you contend then that it was based on  
24 your gender or your race?

Marlayna G. Tillman

180

1 A. Yeah.

2 Q. Why?

3 A. Well, because again I was a union employee.  
4 Whether, you know, anybody wants to acknowledge it  
5 or not, I was doing union work way back when I was  
6 in the conventional department, so my rate should  
7 have reflected that way back then.

8 Q. I'm asking you about the warehouse  
9 department. I want to talk about merchandiser when  
10 we get there. I'm talking about the warehouse.

11 A. It doesn't matter.

12 Q. We're talking about the warehouse position.  
13 You just said when you came in July of 2002 you were  
14 paid 12.68 and that the other members of the union  
15 were paid at least 15.75. That's what you said.

16 A. Um-hum.

17 Q. And I said to you what if there is evidence  
18 that a black male and a white male were also paid  
19 12.68 in July when they came into the warehouse.  
20 Would you still contend that it was based on your  
21 race or sex?

22 A. Yeah, I think I would.

23 Q. Why?

24 A. Because again we go back to when I felt I

Marlayna G. Tillman

184

1 Q. Okay. So beginning in August when you became  
2 a member of the union were you paid at the 15.75  
3 rate?

4 A. I don't know when it was, but I eventually  
5 did get 15.75, yeah.

6 Q. And is that what the union rate says it  
7 should be is 15.75?

8 A. Yeah.

9 Q. Are you contending that you were not paid in  
10 line with this wage schedule?

11 A. Yes, for some period of time, yes, that is  
12 what I'm contending.

13 Q. Why? Tell me about that.

14 A. Because I wasn't paid that rate when I  
15 initially came into the warehouse.

16 Q. You were not a member of the union for 30  
17 days; isn't that correct?

18 A. I was not a member of the union.

19 Q. Correct. Right? You were not a dues paying  
20 member of the union until you were actually brought  
21 into the union 30 days later; correct?

22 A. Yeah.

23 Q. And doesn't the contract, we can pull out the  
24 language, it provides for a period where you're paid

Marlayna G. Tillman

185

1 for 80 percent of the applicable rate? Did you not  
2 know that? I mean if you want to go through the  
3 contract, we can, but did you know about the  
4 training rate of 80 percent?

5 A. No, not in --

6 Q. Let's find it. On Page 29 do you see that  
7 where it says Section 2, step rates?

8 A. Yeah.

9 Q. "Newly hired employees should be paid  
10 according to the following step rate schedule." Do  
11 you see that?

12 A. Um-hum.

13 Q. Where it calls for someone who has been in  
14 the union zero to 12 months gets 80 percent, 13 to  
15 24 months, 90 percent, and 25 months thereafter 100  
16 percent?

17 A. Um-hum. It also says they reserve the right  
18 to waive the step rates at any time.

19 Q. And they did that, right, by raising you to  
20 that rate within a month of when you got there?

21 A. Yeah, but they probably should have been  
22 doing that about a year prior to that.

23 Q. Okay.

24 Are you aware that two other



Marlayna G. Tillman

201

1 A. Approximately, give or take.

2 Q. I'm going to show you your earnings  
3 statements. Were you compensated for all the  
4 mileage that you submitted?

5 A. There were times when it was in question.

6 Q. Tell me about that.

7 A. Well, again when I went to the conventional  
8 department I didn't receive the mileage anymore  
9 because during the week I was driving the company  
10 van, so that mileage was taken away from me, but it  
11 was also taken away from me on the weekends, too,  
12 because on the weekends I worked as a merchandiser.  
13 I was holding down the same two positions.

14 Q. When you say it was taken away from you, you  
15 weren't actually driving your car; correct?

16 A. Absolutely not.

17 Q. So wasn't the mileage reimbursement --

18 A. That was --

19 Q. Hold on. Wasn't the mileage reimbursement  
20 for you driving your own personal car?

21 A. Right.

22 Q. So when you weren't driving your personal car  
23 for work you didn't receive the mileage; correct?

24 A. Yeah. There were sometimes when I did drive

Marlayna G. Tillman

202

1 my car, like on the weekends, when I wasn't paid for  
2 it, because they assumed that I was still driving  
3 the van during the week.

4 Q. So are you telling me you did not receive  
5 mileage reimbursement while you were working in the  
6 conventional department?

7 A. Right.

8 Q. Okay.

9 (Exhibit Tillman-21 was marked for  
10 identification.)

11 BY MS. CLEMONS:

12 Q. Miss Tillman, you now have a collection of  
13 earnings statements in front of you. Do these look  
14 familiar to you?

15 A. Yes.

16 Q. Now, what were the dates you were in the  
17 conventional department?

18 A. October '02 -- I mean October '01 through May  
19 '02.

20 Q. So why don't you turn to where these start in  
21 October and look through May and tell me every place  
22 where you got reimbursed for mileage.

23 Would you just tell me which, when you  
24 get there, which period and how much mileage you got

Marlayna G. Tillman

222

1 merchandisers were laid off at the time you were  
2 transferred to the conventional department?

3 A. I can't comment on that one way or the other.  
4 I don't know.

5 Q. Did anybody ever tell you, rather than being  
6 laid off, we'll transfer you to the conventional  
7 department?

8 A. Nope.

9 Q. Paragraph 15 --

10 A. Because again I was still in the  
11 merchandising department. I still had my  
12 merchandising duties, so they obviously still needed  
13 help in merchandising.

14 Q. My question was, you were in the bulk  
15 department; correct? You were on the bulk side  
16 working for Bruce; right?

17 A. Bulk merchandising.

18 Q. Right. My question was, did you know any  
19 other merchandisers who worked in the bulk who got  
20 laid off at the same time?

21 A. No.

22 Q. You said no. Then I said did anyone ever  
23 tell you that rather than lay you off they would  
24 transfer you to do merchandising duty in the

Marlayna G. Tillman

223

1 conventional department rather than lay you off, and  
2 you said no.

3 A. No. I wasn't transferred out of the  
4 merchandising department. That's my point.

5 Q. I didn't say merchandising department. I  
6 said bulk and conventional.

7 A. Bulk is merchandising.

8 Q. Merchandiser position is merchandising. I'm  
9 talking about in the merchandising position. The  
10 position is called merchandiser; correct?

11 A. Bulk merchandiser.

12 Q. In the department called bulk; correct?

13 A. Um-hum.

14 Q. You were transferred from the bulk department  
15 to the conventional department is your contention;  
16 correct?

17 A. In addition to being in -- it wasn't instead  
18 of. It was in addition to that.

19 Q. So your contention is that you were  
20 performing duties in both departments?

21 A. Thank you. Yes.

22 Q. Tell me what your schedule was.

23 A. My schedule varied.

24 Q. Tell me what you remember.

Marlayna G. Tillman

226

1 Q. Would you look at Paragraph 18? Read that to  
2 yourself.

3 A. Okay.

4 Q. Did you receive overtime pay while you were  
5 working in the conventional department?

6 A. Yes.

7 Q. So the statement that you were not receiving  
8 any overtime pay is not a correct statement?

9 A. It needs to be adjusted.

10 Q. To what?

11 A. It should say that I wasn't receiving  
12 overtime pay at the correct rate.

13 Q. And what is the correct rate?

14 A. Whatever extra man wages were.

15 Q. So you're not contending that you weren't  
16 paid time and a half at your rate, you're contending  
17 you weren't paid time and a half under the union  
18 rate; correct?

19 A. Correct. And also that under the union guys  
20 got double time for working on Sunday which I didn't  
21 receive at all.

22 Q. Again at this time you were not a member of  
23 the union; correct?

24 A. Right.

Marlayna G. Tillman

239

1 were agreed to a full and fair release of the  
2 grievance having to do with this issue?

3 A. No. That was for something different and I  
4 do distinctly remember there being a grievance that  
5 was signed off on but not by myself. There was one  
6 without my signature at all on it.

7 Q. I'm sure Mr. Gelman will get to the  
8 grievances, but you don't recall that one of the  
9 grievances you released had to do with this issue?

10 A. Not with this issue. I recall it being  
11 something else.

12 Q. Any other times that you talked to Tracey or  
13 anyone else in HR about back pay? Am I correct that  
14 by back pay you mean being paid the union wage?

15 A. Yes.

16 Q. Did you talk to anyone else in Pepsi HR about  
17 that issue?

18 A. It may have been brought up with Scott Steiger.

19 Q. First tell me what did Tracey tell you.

20 A. That I wasn't owed that money.

21 Q. And why did she say that? Did she give you a  
22 reason?

23 A. I don't recall a reason actually.

24 Q. Didn't Tracey tell you that you needed to

Marlayna G. Tillman

240

1 have a CDL in order to get the position of an extra  
2 man or a relief driver and that that's why you  
3 weren't able to bid or apply for that job?

4 A. That might have been, yeah, in speaking of  
5 applying for a certain job, yes, that she did  
6 mention that, but that wasn't what was at issue for  
7 me.

8 Q. Okay.

9 A. What was at issue was the fact that I was in  
10 the conventional department, which was a union  
11 position, performing union-based duties.

12 Q. Tell me what your basis is for believing that  
13 every position in the conventional department is  
14 unionized.

15 A. That's my knowledge. That's the knowledge I  
16 have.

17 Q. Have you ever seen a document that says that  
18 every employee of the conventional department is a  
19 member of the union?

20 A. No. My recollection is that the positions  
21 described, um, within the job description were  
22 positions that I performed and those were union  
23 positions, union duties.

24 Q. But were there duties on those descriptions

Marlayna G. Tillman

241

1 that you did not perform?

2 A. Um, not to my knowledge. As far as I know I  
3 did a little bit of everything.

4 Q. Did you take orders from customers?

5 A. No. That's the sales department.

6 Q. I'm asking, did you take orders from customers?

7 A. No.

8 Q. Did you take money from customers for payment  
9 for deliveries?

10 A. No.

11 Q. Did you keep a route book?

12 A. No.

13 Q. Did you drive a tractor-trailer alone?

14 A. Not alone.

15 Q. How often did you drive a tractor-trailer  
16 with someone else?

17 A. I think we went over it, but it was  
18 frequently. I can't count how many times.

19 Q. That you actually drove?

20 A. And they sat in the seat next to me as a  
21 passenger, yes.

22 Q. To your knowledge was a CDL Class A license a  
23 requirement of the delivery driver position?

24 A. Yes.



Marlayna G. Tillman

243

1 receive the training through the company and at the  
2 time they weren't making that available to me,  
3 although they have made it available to other  
4 people.

5 Q. Tell me who it is that you contend received  
6 company training in order to get a CDL.

7 A. James Bell, Matt Casey, Charlie Rogers.  
8 There are a couple other drivers. Those are three  
9 guys that I know of.

10 Q. What training did they receive?

11 A. They were allowed to use the company trucks  
12 to go and take their CDL test. In fact, Matt Casey  
13 told me that he took it like three or four times  
14 because he kept failing and they allowed him to go  
15 back and keep retesting until he actually passed the  
16 test.

17 Q. Weren't you allowed to take the company truck  
18 to go take your CDL?

19 A. Actually I was one time given the truck,  
20 however the day that I took the truck, um, I wasn't  
21 aware that I had to take a written exam first, so  
22 the day that I took the truck, um, I wasn't allowed  
23 to use the truck. I had to take the written exam  
24 first. Actually I failed that written exam, so

Marlayna G. Tillman

245

1 A. Not that I'm aware of.

2 Q. Did she tell you in an e-mail that you could  
3 use a truck to take on days off and that you could  
4 use a truck to take the test, just to let her know  
5 when you wanted to do that?

6 A. Um, no, I don't recall that actually.

7 Q. Okay.

8 How about Rhonda, didn't Rhonda tell you  
9 that you could use a truck on your day off to learn  
10 how to do it, to practice driving?

11 A. No. I think what they were telling me is  
12 that's what other drivers did. They did not tell me  
13 that I specifically could do that.

14 Q. Okay.

15 Did you ever do that?

16 A. Um, the only driving I got in was when I was  
17 actually out driving with the guys in the  
18 conventional department or the -- I kind of learned  
19 by doing some of the jockeying in the yard, but that  
20 wasn't, you know, a requirement of some of the  
21 positions that I was doing, so I kind of learned on  
22 the fly, if that's what you mean.

23 Q. And didn't Rhonda tell you that you should  
24 bid into a union position so you could build

Marlayna G. Tillman

247

1 who did not have a Class A CDL?

2 A. I don't know.

3 Q. So you don't know of anyone?

4 A. I don't know the answer. No, I don't have an  
5 answer to that.

6 Q. So if there were other people who were denied  
7 the ability to apply for the position who were white  
8 men, would you have any basis to dispute that?

9 A. Say that again.

10 Q. Okay.

11 If there are white men who will testify  
12 that they were not permitted to apply or bid on this  
13 position because they did not have a CDL, would you  
14 have any reason to dispute that?

15 MS. BREWINGTON: I'm going to object,  
16 calls for speculation, but you can answer.

17 THE WITNESS: I don't even know how to  
18 answer that.

19 BY MS. CLEMONS:

20 Q. I'm just saying, do you know of anything that  
21 would contradict that?

22 A. I can't answer that.

23 Q. When did you get your CDL license?

24 A. September 2004.

Marlayna G. Tillman

248

1 Q. And how long after you got that license were  
2 you awarded the bid for a driver position?

3 A. I think it was sometime also in September.

4 Q. Within a few weeks?

5 A. I think so.

6 Q. So why is it that you didn't previously  
7 receive your CDL?

8 A. Because there was never an opportunity for me  
9 to take the truck out again until then.

10 Q. Are you saying that you were not permitted to  
11 use a truck to take your test and that's why you  
12 never passed your CDL before September of '04?

13 A. Um, yeah, I'm saying that I was always given  
14 like, you know, an excuse as to why, you know, there  
15 were no trucks available or whatever.

16 Q. Anybody you know during that time who was  
17 allowed to use a truck?

18 A. I don't think anybody else went for a license  
19 at that time. I'm not sure.

20 Q. Take a look at Paragraph 42.

21 A. Okay.

22 Q. What company policy are you referring to for  
23 hiring within?

24 A. Well, I was always told that they have a

Marlayna G. Tillman

252

1 incident came up and all that stuff.

2 Q. Okay.

3 Anything else?

4 A. No.

5 Q. Did you tell Tom Riley and Glen Matthews that  
6 you filed a complaint of discrimination?

7 A. No.

8 Q. To your knowledge, were they aware that you  
9 filed a complaint of discrimination?

10 A. Probably not until they were served with the  
11 document.

12 Q. Are you telling me they were served with the  
13 specific complaint, Tom Riley and Glen Matthews?

14 A. Actually I think Rhonda Curry was, but --

15 Q. So I'm asking, to your knowledge, did you  
16 ever tell them that you filed a complaint?

17 A. No, I never told them.

18 Q. Did they ever tell you that they knew you  
19 filed a complaint?

20 A. No.

21 Q. Did anyone ever tell you that they knew you  
22 filed a complaint?

23 A. Did anyone ever tell me that they knew I  
24 filed a complaint?

Marlayna G. Tillman

253

1 Q. Yes.

2 A. No, not to my knowledge.

3 Q. Okay.

4 Paragraph 52.

5 A. Okay.

6 Q. This is referring to the walking the dog  
7 incident and you previously told me all the facts  
8 you know about that incident; correct?

9 A. Um-hum. Yes.

10 Q. Okay.

11 At the end of this paragraph it says,  
12 "No individual in the department was reprimanded for  
13 this activity."

14 Is that a true statement?

15 A. No other individual in the department was  
16 reprimanded in the manner that I was for that  
17 activity, no.

18 Q. What do you mean by "in the manner that you  
19 were"?

20 A. Well, I was pulled aside solo and reprimanded  
21 verbally and I was threatened with termination.. If  
22 you're talking about the little afterthought  
23 conference that Tom had with everybody else, they  
24 weren't disciplined in the same manner that I was.

Marlayna G. Tillman

254

1 Q. I'm asking, do you have knowledge -- how  
2 would you know if he ever pulled another employee  
3 aside and told them the same thing?

4 A. He didn't do it that day.

5 Q. So you're talking about that day in reference  
6 to this comment?

7 A. Right.

8 Q. So if other employees would testify at  
9 different times on different days Tom Riley gave  
10 them the same riot act that you say he gave you  
11 about walking the dog, would you have any  
12 information to dispute that?

13 A. I wouldn't.

14 Q. Paragraph 55. Is it true that you were laid  
15 off with no forecast for recall?

16 A. Yes.

17 Q. Paragraph 56.

18 A. Okay.

19 Q. Is that a true statement, that you were the  
20 only individual not recalled to work two days later?

21 A. To my knowledge, yes.

22 Q. If there were other employees who were not  
23 called back two days later, would you have any  
24 information to dispute that? Do you have any

Marlayna G. Tillman

255

1 documents or firsthand knowledge?

2 A. No, only what I was told by an employee who  
3 was called back.

4 Q. So your knowledge that everybody was called  
5 back was based on what somebody else told you?

6 A. One of the affected group, yes.

7 Q. And you filed a grievance about this;  
8 correct?

9 A. Yes, I did.

10 Q. And you were paid for the entire four weeks  
11 you were laid off, correct, as a result of that  
12 grievance?

13 A. Yes.

14 Q. Paragraph 59.

15 A. All right.

16 Q. You said, "Plaintiff's supervisor started  
17 creating a disciplinary file on plaintiff."

18 What are you referring to? Did you see  
19 a file of some sort?

20 A. They had, I guess it's a file, it's a  
21 document that shows you how many occurrences and  
22 stuff that you have which prior to that I had never  
23 seen anything like that before.

24 Q. Okay.



Marlayna G. Tillman

256

1           Isn't it true that there was a new  
2 attendance policy put into place around this time?

3       A.   I really couldn't tell you.

4       Q.   In this paragraph you talk about an  
5 eight-minute acceptable window for tardiness.

6           What is that?

7       A.   Basically, it just refers to a window of time  
8 that employees had to punch in without being, you  
9 know, I guess reprimanded for it or without having  
10 something put in their file.

11       Q.   Where did you learn about this eight-minute  
12 window of time?

13       A.   Again, that was something that was like  
14 common knowledge or custom or whatever.

15       Q.   Paragraph 60.

16       A.   Okay.

17       Q.   Tell me about this incident.

18       A.   I came into work. I punched in. I was  
19 walking across the floor to my station. My cell  
20 phone, which was on my person, rang, and I answered  
21 it and the plant manager, who was on the floor at  
22 the same time, basically started screaming at me,  
23 you know, you're not supposed to have your cell  
24 phone, you're not supposed to answer cell phones,

Marlayna G. Tillman

257

1 there is no phones supposed to be in the plant, and  
2 just basically yelling at me on the floor, and I was  
3 actually on the phone and this guy was like  
4 screaming in my ear, and there were a couple people  
5 that, you know, were there.

6 It was just kind of embarrassing that,  
7 you know, he was yelling at me in front of people,  
8 so, and he really didn't have to, you know, in my  
9 opinion, didn't have to take that position. He  
10 could have just, you know, just pulled me to the  
11 side or, you know, basically in a calm, cool,  
12 collected fashion, you know, tell me, hey, that's,  
13 you know, something that we don't do or whatever.

14 Q. Hadn't another supervisor just the day before  
15 told you not to use your personal cell phone on the  
16 floor?

17 A. I don't recall that.

18 Q. Did this incident result in any change to  
19 your salary?

20 A. To my salary, no.

21 Q. Your hours?

22 A. Not as far as I know.

23 Q. Your schedule?

24 A. Well, again we talked about my schedule

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MARLAYNA G. TILLMAN, : CIVIL ACTION  
Plaintiff, :  
vs. :  
THE PEPSI BOTTLING GROUP :  
INC., and TEAMSTERS LOCAL :  
UNION 830 :  
Defendant : NO. 04-1314

Philadelphia, Pennsylvania  
Wednesday, October 11, 2006

Continued Deposition of MARLAYNA G.  
TILLMAN, taken pursuant to notice, at the law  
offices of Ballard Spahr Andrews & Ingersoll, LLP,  
919 Market Street, 12th Floor, Philadelphia,  
Pennsylvania, on the above date, at approximately  
11:00 a.m., before Terry Barbano Burke, RMR-CRR.

DONNA A. BITTNER REPORTING  
Registered Professional Reporters  
61 Penn Road  
Voorhees, New Jersey 08043  
(856) 768-6619

1 APPEARANCES:

2 J. STEPHEN WOODSIDE, ESQUIRE  
3 Law Office of J. Stephen Woodside  
4 One Montgomery Plaza  
425 Swede Street, Suite 605  
Norristown, Pennsylvania 19401

5 Counsel for the Plaintiff

6 LUCRETIA C. CLEMONS, ESQUIRE  
7 AISHA M. BARBOUR, ESQUIRE  
Ballard Spahr Andrews & Ingersoll, LLP  
1735 Market Street, 51st Floor  
8 Philadelphia, Pennsylvania 19103  
Counsel for the Defendant  
9 The Pepsi Bottling Group, Inc.

10 MARC L. GELMAN, ESQUIRE  
11 Jennings Sigmond, P.C.  
The Penn Mutual Towers  
16th Floor  
12 510 Walnut Street  
Philadelphia, Pennsylvania 19106-3683

13 Counsel for the Defendant  
14 Teamsters Local Union 830  
15 - - -  
16  
17  
18  
19  
20  
21  
22  
23  
24

Marlayna G. Tillman

1 Pepsi Bottling Group, Inc.

2 MS. CLEMONS: No. The proper name of  
3 Pepsi is Bottling Group, LLC. It is doing business  
4 as Pepsi Bottling Group. In every pleading we  
5 identify that as such.

6 MR. WOODSIDE: Fine. That's the  
7 defendant no matter how they're captioned and  
8 Document Request No. 24 Pepsi is asked for federal,  
9 state and local tax returns, including W-2 forms,  
10 and any and all schedules and attachments for the  
11 years 1999 through 2004 and for future years as  
12 they become available.

13 After consulting with the client,  
14 reviewing this, and having seen this before and  
15 having produced to Pepsi, as well as Local 830,  
16 every document that we have in our possession  
17 relating to any document request by any defendant  
18 in this case, and Mr. Gelman has received copies of  
19 everything as well, the plaintiff will agree to  
20 produce her federal tax returns and any schedules  
21 and attachments for the years for which she was  
22 employed by Pepsi Bottling Group, which would be  
23 2001, 2002, 2003, and 2004. We will not produce a  
24 tax return for 1999 and we will not produce any tax

Marlayna G. Tillman

1 returns relating to any income earned or for any  
2 period after her employment with Pepsi ended, which  
3 was, I believe, in November of 2004. And we will  
4 not produce any future returns as they become  
5 available.

6 They are highly irrelevant and the  
7 objections are carried forward from our  
8 interrogatory answers to this document request, and  
9 this material will not be produced. So with  
10 respect to that statement on the record, counsel  
11 for Pepsi has presented me with a form 4606 T,  
12 request for transcript of tax return, and the  
13 plaintiff has agreed to sign inasmuch as she cannot  
14 locate any returns right now. She will sign this  
15 request transcript form for the years I just stated  
16 on the record, and Pepsi can obtain them directly  
17 from the IRS.

18 The only position I have would be that  
19 as regards any documentation received from the  
20 Internal Revenue Service that the plaintiff be  
21 served with any material received by Pepsi's  
22 counsel.

23 I think that should take care of  
24 things for today.

Marlayna G. Tillman

1 Q. I guess that's perhaps up for dispute.

2 I guess now is as good a time as any,  
3 and some of this was covered in your last  
4 deposition, and I am going to try my best not to  
5 have you repeat anything that you discussed there.  
6 It serves no purpose. However, I suppose it would  
7 be most helpful for today's deposition if we could  
8 go back and try and create a time line.

9 What was the first position you held  
10 with Pepsi?

11 A. Merchandiser.

12 Q. What was your date that you became a  
13 merchandiser?

14 A. May 8th, '01.

15 Q. What was the next position you held at Pepsi?

16 A. That would be in the conventional department.

17 Q. And when did you attain this position?

18 A. Approximately October of '01. I would say,  
19 my best recollection is October 13th of '01.

20 Q. And then at a certain point you left the  
21 conventional department?

22 A. Yes.

23 Q. And where did you go after that?

24 A. Actually, I was returned back to the

Marlayna G. Tillman

1 merchandising department.

2 Q. Do you recall the date?

3 A. I want to say May of 2002.

4 Q. At any point did you then leave the  
5 merchandising department?

6 A. Yes. Let me make sure.

7 July, I believe July 2002 I was made a  
8 member of the warehouse. So I got a position in  
9 the warehouse.

10 Q. Some time thereafter you became a member of  
11 the union?

12 A. Yes.

13 Q. When you were in the merchandising  
14 department, and I'm not sure if you said  
15 merchandising department or merchandiser, is it  
16 fair to say your job title was as a merchandiser?

17 A. Yes.

18 Q. And do you contend that a merchandiser is a  
19 position that was covered under the collective  
20 bargaining agreement between the union and Pepsi?

21 A. The merchandising department is not.

22 Q. So from all of the time you spent in the  
23 merchandising department until October of 2001, are  
24 you claiming that you had any rights under the



436

Marlayna G. Tillman

1 A. Okay.

2 Q. Tell me about this layoff that's referenced  
3 in Paragraph 57 and 58.

4 A. Well, as it says in Paragraph 53, basically I  
5 filed a charge of discrimination based on treatment  
6 I was receiving after I was awarded the position in  
7 the warehouse.

8 Q. So for all activities discussed in Paragraphs  
9 53 through 58, were you a warehouse employee?

10 A. Yes.

11 Q. Were you a bargaining unit member?

12 A. I believe I was, yes.

13 Q. I'm sorry I interrupted you. You were  
14 explaining what you meant by 58?

15 A. Yes. After I filed my discrimination charge,  
16 I got laid off shortly thereafter. I believed it  
17 to be in retaliation for filing the charge of  
18 discrimination. I base that on the fact that I was  
19 not recalled in the same time frame as the other  
20 people who were laid off. The three gentlemen that  
21 were named as being in the warehouse before me also  
22 were laid off. I guess due to business necessity  
23 or whatever. But they all got recalled, and I did  
24 not.

**4**

<b>Internal Posting</b> Date of Opening: <u>1/2/02</u> Date of Posting: <u>1/8/02</u> End Posting: <u>1/18/02</u> Hiring Manager: <u>TBA</u> Job Opening #: <u>MD120-120401</u> Hourly Rate: <u>\$10.88 (weekend work required)</u>	<b>External Posting</b> For information on completing an Application contact: PBG's Job Line 302/761-8683 _ _____ _____
---	--

## MERCHANDISER – Wilmington, DE

### JOB SUMMARY:

To provide customer support by maintaining shelf space, displays, etc. according to standards      Pepsi

### PRIMARY JOB ACCOUNTABILITIES:

- Merchandise store shelving, coolers and displays with Pepsi products in accounts assigned by supervisor
- Utilize point of purchase in each account
- Keep back room stock in neat and orderly condition
- Communicate sales results to store and Pepsi management
- Build customer relationships at store level

### JOB ELIGIBILITY CRITERIA:

- Previous grocery retail merchandising experience preferred
- Must be 18 years of age
- ***Must have car or personal transportation to access multi-store locations within assigned shift***
- Proof of insurance
- ***Valid Driver's License***
- No more than 1 moving violation i.e. reckless driving, speeding in excess of 15 miles above the posted speed limit within the past year
- ***No serious motor vehicle violations such as DWI, DUI in the past year***
- No more than 2 moving violations or serious motor vehicle violations within the past 3 years
- Must be able to perform physical lifting of 40-50 lbs. or greater on a repetitive daily basis, reaching above shoulders and bending frequently, kneeling/squatting often

